

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-PS-O-

RICHARD C. BRINK, 03B1215,

Petitioner,

-v-

JAMES T. CONWAY,

Respondent.

DECISION AND ORDER
07-CV-6032Fe

Petitioner Richard C. Brink, acting *pro se*, an inmate of the Southport Correctional Facility, seeks relief pursuant to 28 U.S.C. § 2254, alleging that his conviction in Supreme Court, Monroe County, State of New York, was unconstitutionally obtained, as set forth more precisely in the petition.

By Order filed February 20, 2007 (Docket No. 5), the Court directed that, to the extent petitioner's claims in his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 were unexhausted, the claims were dismissed without prejudice, subject to the condition that petitioner seek to exhaust the claims in state court and then immediately return to this Court. Now before the Court is petitioner's motion (Docket No. 6) to lift the stay because he has received the state court determination of his state court CPL 460.15 motion. Petitioner's request is granted. The abeyance order of February 20, 2007 is hereby rescinded and the claims dismissed by that order are hereby reinstated in the case.

IT HEREBY IS ORDERED as follows:

1. The abeyance order of February 20, 2007 is hereby rescinded and the claims dismissed by that order are hereby reinstated in the case.

2. Respondent shall file and serve an **answer** to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **May 31, 2007**. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of, and documents relating to, such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in [ct of conviction (eg, Supreme)] Court at issue now before this Court shall submit such records to respondent or the respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs and record on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

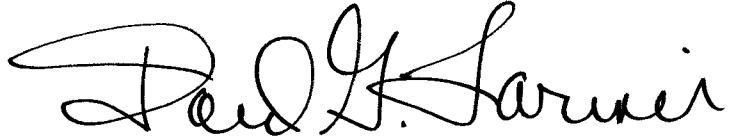
Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition,

accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

3. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, by certified mail, upon respondent Superintendent of Southport Correctional Facility and upon the Assistant Attorney General in Charge, 144 Exchange Street, Rochester, New York 14614. To advise appropriate Monroe County officials of the pendency of this proceeding, the Clerk of Court shall also mail a copy of this order to the District Attorney of Monroe County.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT.**

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED:

April 16, 2007
Rochester, New York